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Gender Justice and Uniform Civil Code

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ABSTRACT

The article discusses the link between gender justice and the enforcement of the Uniform Civil Code (UCC) in India. The UCC is specified in Article 44 of the Indian constitution, aiming to standardize personal laws governing marriage, divorce, inheritance, and adoption across the diverse religious communities in India. Currently, these laws vary significantly between different religious groups, leading to gender inequalities. While the judiciary has played a crucial role in advocating for the importance of introducing the UCC in the Indian legal system through landmark judgments, its implementation remains a contentious issue among lawmakers. Therefore, the article emphasizes the historical background of personal laws and the need for a change to achieve equality among citizens in our country.

Keywords: *Uniform civil code, Gender justice, Judiciary, Personal laws, Discrimination, Legal reform, and Directive principles.*

I. INTRODUCTION

The Uniform Civil Code (UCC) is a set of laws that would apply to all citizens, regardless of their religion, in matters such as marriage, divorce, inheritance, and adoption. However, in India, there is currently no uniform civil code for personal law matters. The criminal law in India is the only law that applies to all citizens, regardless of their religious affiliations. The laws governing marriage, divorce, inheritance, guardianship, etc. for Hindus, Muslims, Christians, and Parsis are different. There is a lack of uniformity in personal law matters. The formation of a uniform code to govern these matters has been a sensitive topic of discussion throughout the history of Indian law-making. This lack of uniformity has led to a discriminatory approach towards women by the law. It's important to examine the current scenario of Indian women and personal laws.

II. HISTORICAL CONTEXT OF PERSONAL LAWS IN INDIA

In India, the rich religious and cultural legacy of the nation is closely connected to the historical background of personal laws. Personal laws have historically been drawn from many societies' religious texts and conventions and deal with issues including marriage, divorce, inheritance,

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adoption, and family relationships. An outline of the development of personal laws in India is provided below.

India's legal system underwent significant modifications during British colonial rule. The British recognized and respected the many religious and cultural customs of different communities, and so they chose not to get involved in matters of personal law, even though they created a unified criminal and civil code for most parts of governance. Consequently, there was a formal definition of Muslim and Hindu personal rules, mostly based on religious writings such as the Sharia for Muslims and the Manu smriti for Hindus. During the late 18th century, the British administration, led by Warren Hastings, started the process of codifying Hindu and Muslim laws. They applied Hindu law to Hindus and Muslim law to Muslims in cases of marriage, divorce, and inheritance. This was done to uphold social order and to prevent interference with the religious customs of Indians.

After India gained its independence in 1947, the problem of creating a cohesive nation that respected its cultural and religious diversity fell to the drafters of the Constitution. The writers of the Constitution included Article 44, which calls for the state to work toward the creation of a Uniform Civil Code (UCC) for all citizens, into the Directive Principles of State Policy to advance gender equality and national unity. The recently independent Indian state purposefully chose to maintain the system of distinct personal laws after giving it considerable thought. The difficult task of balancing many legal systems and the need to honor religious sensitivities informed this conclusion. However, it was also acknowledged that reform is desperately needed, especially when it comes to concerns of gender justice.

In the 1950s, the Hindu Code Bills represented a landmark effort to reform and modernize Hindu personal laws. These bills encompassed the Hindu Succession Act of 1956, the Hindu Marriage Act of 1955, the Hindu Minority and Guardianship Act of 1956, and the Hindu Adoptions and Maintenance Act of 1956. Through these legislative acts, substantial changes were implemented, granting women equal rights to inheritance and empowering them to seek divorce. The modification of Hindu personal laws was a controversial process that drew strong resistance from traditional Hindus. However, the government, led by Prime Minister Jawaharlal Nehru, pushed for the reforms as part of a larger effort to modernize Indian society and promote gender equality.

Muslim laws were largely touched by the reformers as compared to Hindu laws. The Muslim Personal Law (Shariat) Application Act of 1937 still governs marriage, divorce, and inheritance among Muslims. The hesitation to alter Muslim personal laws stemmed from worries of political repercussions and concerns about encroaching on religious liberty. Over the years,

there have been various calls for reform within the Muslim community, particularly addressing customs such as triple talaq and polygamy, which are considered discriminatory against women. However, these topics have remained delicate, with any attempts at reform frequently resulting in heated controversy.

III. DISCRIMINATION AGAINST WOMEN BY PERSONAL LAWS

The personal laws in India are primarily based on social principles that existed in ancient times, which were largely unfair to women and did not promote gender equality. Therefore, it is fair to say that the idea of gender equality is a relatively new concept in Indian society.

In Hindu law, the principles outlined in the Manu Smriti are typically upheld. For instance, specific rules are applied in matters of succession, maintenance, and adoption. Historically, women were not considered the exclusive heirs of the family, and only men could inherit property from their fathers. The Karta, or head of the family, held the final authority in matters concerning women in the family. Despite these traditional norms persisting in some circles, the judiciary has taken affirmative steps to counter this mindset and practice within our society. In the case of *Daneman V. Amar*, the court held that daughters have equal rights as sons for the properties owned by the father.² In this instance, the court delved into the far-reaching implications and goals of the 2005 amendment, which sought to eradicate gender disparities in Indian society. The amendment tackled various issues, including divorce, adoption, and more, where the husband wields ultimate authority in decision-making. Even widows were required to obtain their husband's consent before being able to adopt a child, perpetuating unjust customs that have endured for years and continue to impact contemporary society.

In the context of Muslim personal laws, we observe a disparity in the rights and privileges assigned to men and women. One notable example is the practice of polygamy, where a man is permitted to enter into marriage with up to four women, while a woman would violate the law if she were to marry another man concurrently. The custom of triple talaq was traditionally observed among Muslim communities until the recent case of *Shayara Bano*, in which a five-judge panel of the Supreme Court deemed it to be an unconstitutional practice.³

In the realm of religious practices and ideologies, a pattern of male dominance is observable within Christian laws, reflecting a broader trend across varying personal laws. Under the Indian Divorce Act of 1869, the divorce proceedings for Indian Christians were characterized by a notable gender imbalance, as husbands were only required to prove adultery for divorce while

² (2018)3 SCC 343

³ (2019) 9 SCC 1

wives had to substantiate multiple grounds such as bigamy, cruelty, desertion, sodomy, and adultery. However, the landscape evolved in 2005 with the passing of an Amendment bill that introduced reasonable grounds for divorce accessible to both parties, regardless of gender. Despite this progressive development, it remains essential to acknowledge the persistent inequalities perpetuated in certain areas by our country's lawmakers, contributing to the unequal treatment of men and women.

The current situation highlights the need for significant change. Fozia, the president of CFI at Jamia Millia Islamia in Delhi, emphasized that "Girls should not be confined within four walls." If the laws meant to dismantle these barriers end up creating new ones, we cannot ignore this issue. This underscores the necessity for a uniform code that can address the prevailing inequality in our society. The call for reform extends beyond mere legal adjustments and embraces a profound social transformation. This transformation demands the recognition and safeguarding of individual liberties and rights, irrespective of gender. A unified legal framework would act as a bulwark against inequality, ensuring that no one is marginalized or subjected to unfair treatment. Visionary leaders like Fozia embody the aspirations of a burgeoning justice movement, seeking to turn empowerment into a tangible reality rather than a mere slogan. Our legal system must evolve in tandem with societal changes, embodying our steadfast dedication to fairness and inclusion for all. Failing to make these adaptations risks perpetuating oppressive cycles and thwarting the potential of countless individuals who deserve the opportunity to thrive.

IV. UNIFORM CIVIL CODE APPROACH TOWARD GENDER JUSTICE

The legal framework outlined in Article 44 of our constitution emphasizes the implementation of a uniform civil code (UCC) as a directive principle of the state. The directive regarding the Uniform Civil Code (UCC) goes beyond mere legal standardization; it serves as a mechanism to champion justice, equality, and national integration. Its objective is to ensure that all citizens, irrespective of their religious beliefs, adhere to the same set of laws. While it currently lacks enforceability, the UCC is designed to address disparities in personal laws, particularly those that exhibit gender-based discrimination. By fostering principles of equality and secularism, the UCC endeavors to establish a more unified and just society where individual rights are uniformly upheld, thereby advancing the constitutional vision of justice for all.

The primary objective of the UCC is to establish uniformity among citizens, particularly addressing gender equality within the society. As of now, the imposition of the UCC remains a highly debated and discussed topic. Over the years, there have been several judicial approaches

aimed at establishing a uniform code to govern various aspects such as marriage, divorce, succession, and more. Notable case laws in this regard have generated significant public attention and interest.

1. *Sarla Mudgal vs. Union of India*⁴, in this case, the Supreme Court held that it is illegal to solemnize a second marriage by converting to Islam without dissolving the first marriage. The case is considered a landmark judgment. Also, the bench called the failure of successive governments to date for not having a proper implementation of a uniform civil code in India. They ordered the government to have a fresh look at the principle laid down under Article 44 of the Indian constitution.
2. *Ms. Jordan Deigndeh vs. S.S Chopra*⁵, in this case, the need for UCC in Indian society was pointed out by D. Chinnappa Reddy, J. He observed: “The present is yet another which focuses on the immediate and compulsive need for a uniform civil code. The unsatisfactory state of affairs consequent on the lack of a uniform civil code is exposed by the facts of the present case.”
3. *John Vallamattom vs. Union of India*,⁶ the court held that section 118 of the Succession Act is unconstitutional being violative of article 14 of the constitution. Along with that the chief justice of India forcefully reiterated the view that the common civil code be enacted as it would solve such problems. “Article 44 is based on the premise that there is no necessary connection between religion and personal law in a civilized society.”

The case laws delve into the intricate ways in which courts perceive and emphasize the significance of implementing a uniform civil code (UCC) in Indian society. They also shed light on the proactive role of our judicial system in enforcing the UCC to uphold the unity and integrity outlined in our country's preamble. Moreover, these cases vividly portray the transformative potential of a uniform code in challenging and reshaping the prevailing gender-based hierarchies within our society.

V. CONCLUSION

Gender justice has always been a sensitive topic of discussion in our country. Through many activist moments, many of us brought the unjust societal constraints on women to the public eye. But many a time the governing authorities turned a blind eye towards their effort. As a developing country, India still needed to develop in many areas, especially in the equality of

⁴ (1995) 3 SCC 653

⁵ AIR 1985 SC 935

⁶ AIR 2003 SC 2902

women under the legal system. We have a dynamic country that consists of diverse religious beliefs, and ideologies which needed a common and uniform code to bring integrity among these diversifications. In addition to that women form about half of the Indian population. To sum up we can say that a common civil code will enhance the cause of national integration by removing the contradictions based on ideologies.
